

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 08, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ESTATE OF JONNY TORRES, by
and through his Personal
Representative MANUEL BANDA;
JAMIE VALENCIA, parent of Jonny
Torres; and MARIA M. TORRES,
parent of Jonny Torres,

Plaintiffs,

v.

KENNEWICK SCHOOL DISTRICT
#17; a quasi-governmental agency
and agents thereof with knowledge
and responsibility; TAMARA
VASQUEZ, individually and in her
capacity as Nurse at Highlands
Middle School; KENNEWICK
PUBLIC HOSPITAL DISTRICT,
d/b/a TRIOS HEALTH, and agents
thereof with knowledge and
responsibility; DR. WHITNEY FIX-
LANES, in her capacity acting as a
medical doctor for TRIOS HEALTH;
DR. SHEILA K. DUNLOP, in her
capacity acting as a medical doctor
for TRIOS HEALTH; and JOHN and
JANE DOE,

Defendants.

NO: 4:19-CV-5038-RMP

ORDER DENYING AS MOOT WITH
LEAVE TO RENEW DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT RE: TAMARA
VASQUEZ

ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT RE: TAMARA VASQUEZ AS MOOT WITH LEAVE TO RENEW ~1

1 BEFORE THE COURT is Defendants' Motion for Partial Summary Judgment
2 Re: Tamara Vasquez, ECF No. 22. The Court has considered the motion, the record,
3 and is fully informed.

4 On August 19, 2019, Defendants filed the motion at issue seeking dismissal of
5 Plaintiffs' 42 U.S.C. § 1983 claim against Ms. Vasquez based upon alleged due
6 process violations. Defendants argued that Ms. Vasquez is entitled to qualified
7 immunity from Plaintiffs' § 1983 claim. Defendants also sought dismissal of
8 Plaintiffs' negligence claim against Ms. Vasquez.

9 On August 21, 2019, Defendants withdrew in part their Motion for Partial
10 Summary Judgment as it relates to Plaintiffs' negligence claim against Ms. Vasquez.
11 ECF No. 25. Defendants indicated they would re-note the motion as it relates to
12 Plaintiffs' negligence claim after the parties conducted discovery. Defendants have
13 yet to re-note the motion as it relates to negligence.

14 Defendants also did not withdraw the motion as it relates to Plaintiffs' §1983
15 claim, seeking a decision on the issue of qualified immunity. The parties stipulated
16 to continuing the briefing deadlines three times to focus on the potential resolution
17 of this matter. ECF Nos. 29, 32, 39. At this time, no response or reply to
18 Defendants' Motion for Partial Summary Judgment Re: Ms. Vasquez has been filed.

19 Furthermore, the Court granted Plaintiffs' Motion to Amend Complaint. ECF
20 No. 38. The Amended Complaint, ECF No. 41, filed on December 19, 2019,
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1 clarifies that the § 1983 claim, in addition to the ADA and 504 claims, are not
2 directed at Ms. Vasquez in her individual capacity. ECF No. 41 at 24, 26.

3 Due to the lapse in time since Defendants' Motion was initially filed, the
4 failure to re-note the motion, the intervening amended complaint, and the lack of
5 briefing on the Motion, the Court finds it appropriate to deny Defendants' Motion
6 for Partial Summary Judgment as moot with leave to renew.

7 Accordingly, **IT IS HEREBY ORDERED** that Defendants' Motion for
8 Partial Summary Judgment Re: Tamara Vasquez, **ECF No. 22**, is **DENIED AS**
9 **MOOT WITH LEAVE TO RENEW.**

10 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
11 Order and provide copies to counsel.

12 **DATED** October 8, 2020.

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14 *s/ Rosanna Malouf Peterson*
15 ROSANNA MALOUF PETERSON
16 United States District Judge
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